

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant:** Michaelle Biddle, c/o David Biddle

**Date Application filed with the Town Clerk:** June 30, 2005

**Nature of request:** To renew Special Permit FY2003-00044 under Section 9.22 of the Zoning Bylaw to allow continued use of the premises as a fraternity house, to change the length of the permit to five (5) years and to allow the property to be used as a boarding house if it is felt that this would help provide greater control of the occupants by the landlord.

**Location of property:** 382 North Pleasant Street (Map 11C, Parcel 118, R-G Zoning District)

**Legal notice:** Published on July 27<sup>th</sup> and August 3<sup>rd</sup>, 2005 in the Daily Hampshire Gazette and sent to abutters on July 28, 2005.

**Board members:** Tom Simpson, Ted Rising and Barbara Ford

**Submissions:** The applicant submitted with the application:

- A site plan of the property, drawn by David Miller, dated August 1975
- Floor plans of the building, including the top three floors with 10 student bedrooms, 3 baths and kitchen; the basement contains a party room, bar and boiler room.
- A management plan for the Alpha Delta Phi fraternity, stating that Mr. Biddle would be the primary caretaker of the property.

Town staff submitted the following:

- A letter to David & Michaelle Biddle and Charles Moody, Chapter President, dated May 2, 2005 from Mark Snow, Building Inspector, concerning a list of fire and building code violations from an inspection on April 27, 2005
- A letter to David & Michaelle Biddle and Dave Stryer, resident manager, dated June 6, 2005 from Mark Snow, Building Inspector with another "Notice of Violation" from an inspection on May 31, 2005. Ten (10) pages of pictures dated May 31, 2005 showed the problems still existing.
- Photographs dated 7/26/05 from Inspection Services showing the overflowing dumpster used by the fraternity house
- Photographs dated 8/8/05 from Inspection Services showing a sofa, chair and mattress added to the overflowing dumpster used by the fraternity house.
- A memo to the Board from zoning staff dated August 5, 2005, concerning the distinction between boarding houses and a fraternity in terms of Section 9.22 of the Zoning Bylaw
- A memo to the Board dated August 9, 2005 from Michael Zlogar, Assistant Fire Chief, and William Klaus, Fire Prevention Officer outlining 6 safety problems and 4 violations of the ZBA 2003 Special Permit.
- A memo to the Board dated August 10, 2005 from Mark Snow, Assistant Building

Commissioner, concerning conditions of Special Permit FY2003-00044 that are “areas of concern.”

- A memo to the Board dated August 24, 2005 outlining some recommendations from the Planning Director for regular inspections and possible conditions if the Board voted to renew the Special Permit

Submitted at the hearing by a neighbor - a 5-page police report of police calls from 8/17/03 to 7/4/05 for fights, liquor law violations, noise complaints, still alarms, arrests, etc.

**Site Visit:** August 9, 2005

The Board met with Mr. Biddle and the fraternity president at the site. They observed:

- The interior of the house – the three floors of bedrooms, plus the basement party room.
- The table and grill in the front lawn
- The overall run-down condition of the property and house
- The lack of dumpster on the property
- The unchanged rutted condition of the driveway
- The fraternity next-door to the south, the fraternities across the street, and the residential neighborhood to the west and south of the property.

**Public Hearing:** August 11, 2005

David Biddle, the primary manager, represented the applicant at the hearing. Chuck Moody, chapter president of the Alpha Delta Phi Fraternity, also was present.

Mr. Biddle asked for renewal of Special Permit FY2003-00044, to extend the renewal period to five years, and/or to have permission for a rooming house on the premises.

Mr. Biddle said that the Alpha Delta Phi fraternity is a coed fraternity nationally, but is a male chapter at the University of Massachusetts. He stated that the fraternity is a good group of young men, except that there have been more inspections than usual in the past year. All fraternities are inspected every six months by the Town's Inspection Services and Fire Department, but continue to be re-inspected until the violations are changed and the safety codes are met.

Mr. Biddle stated that there had been no police activity in the last two years, and that his job is to educate the students to be responsible citizens. He said that he does a “good job at it.”

Mr. Biddle said that the house could be a rooming house, but it's more difficult to interview and rent to individual students than it is to a group.

Board Chair Tom Simpson stated that the applicant must choose one type of use or the other, and the Board will act on that choice. Section 3.01 of the Zoning Bylaw prohibits more than one principal use on site, or to switch use after the fact. Neither boarding houses nor fraternities are allowed in a General Residence district; the fraternity is permitted under a Special Permit as a non-conforming use that had continued since the Bylaw changed. A boarding house could be considered as a non-conforming use not “substantially more detrimental to the Neighborhood than the existing non-conforming use” (Section 9.22 of the Bylaw).

Mr. Biddle responded that he would prefer the fraternity. However, the number of students living in the house is less – currently there are 10 or 11. The 1981 Special Permit for a sorority allowed 24

residents; the 2001 & 2003 Special Permits for the fraternity allowed 18 students. A rooming house would allow him to have a higher occupancy than just the fraternity members.

Mr. Simpson asked how the applicant has adhered to the conditions of the previous permit. Mr. Biddle responded "pretty well" – but he said that the residents had a question about the type of furniture allowed outside. The wording of the 2003 permit's conditions is unclear. The fraternity members now understand that the restriction is to the use of upholstered furniture outside on the porch or on the lawn.

Mr. Biddle said that there have been mistakes about furniture use outside. He also said that the alumni have disregarded the rules, and other misbehavior has been caused by non-fraternity visitors from out of town. He now takes a more firm line on unacceptable behavior.

Mr. Biddle stated that he has a receipt that the resident manager is registered with the Police Department. His name is David Stryer, and he lives in room #2 of the house.

Mr. Simpson asked about non-fraternity members living in the house. The memo from the Fire Department, dated August 9, 2005, stated that "during regular inspections we have found residents living in the building who are not fraternity members." Chuck Moody, Chapter President, testified that no one other than members live at the house.

Mr. Simpson asked about the dumpster. The site plan approved in 2003 showed a dumpster located in the back of the property. Moreover, Condition #11 of the 2003 Special Permit requires that all trash be disposed of in a closed dumpster located at the approved location, that the dumpster be emptied weekly by a professional hauler, and that no trash would be stored otherwise. The Inspection Services reports/pictures show that this condition has not been upheld.

Mr. Biddle responded that there had been two dumpsters side-by-side on Fearing Street, which was too many he felt. One also served his other property, the first house on Fearing Street, a four-family house. He had "pulled" one dumpster, then dragged the dumpster from the Alpha Delta Phi house and combined it with a third property on the corner – the Lambda Chi Fraternity. He stated that he did this because the driveway of Alpha Delta Phi was often blocked with cars and the refuse truck often could not get to the fraternity's dumpster.

The Board asked Building Commissioner Bonnie Weeks to verify the current location of the dumpster. Ms. Weeks replied that it currently is located along Fearing Street behind the Lambda Chi fraternity, not in the location approved by the Board for the 2003 Special Permit.

Mr. Biddle said that he could put another dumpster on the fraternity property. He would like it in the front near North Pleasant Street so that it would not be blocked by cars parked in the driveway.

Board member Ted Rising responded, and listed a number of other violations of the 2003 Special Permit:

- 1) A dumpster in the front of the building would not be acceptable. North Pleasant Street is a major entrance to the University and the neighborhood is residential.
- 2) The driveway continues to be rutted and in poor condition (condition #18)
- 3) The recreation area in the back is not cared for and in poor repair.
- 4) The front yard has a picnic table and barbecue, which is not allowed according to the permit. (conditions #7 & 12).

- 5) The entire outside of the property is “an eyesore”
- 6) The inside is very poor – a new housekeeper is needed.

Mr. Biddle responded that the back porch is very small. The volley ball court is used regularly and gets new sand every year. The picnic table and barbecue have been in the front for years – the front porch and yard is the locus of socialization for the fraternity.

Mr. Biddle stated that it's a constant job of trying to keep the house neat. He goes by the house several times a week and inspects for cleaning. The members are delighted to clean. There are two house managers who clean, and the others break things.

Board member Barbara Ford said that the Resident Manager who lives in Room #2 should have the responsibility to keep the place in good repair and not intrusive noise-wise; even the regular inspections by the Town have not been successful in keeping the management under control.

Mr. Biddle concurred that there were beer cans littered in the basement party room.

Ms. Ford asked if the parking could be improved with designated areas. Mr. Biddle responded that he has tried painting parking spaces along the driveway, but it doesn't last on the gravel and dirt there. Moreover, there has been a debate about exiting over the Lambda Chi property to Fearing Street. Often there are many cars parked in the back and cars cannot get through. Designating parking spots would not solve this problem.

The Board noted that there also should be shrubs and appropriate screening to separate the two fraternity properties along the driveway and in the back open area.

Board Chair Mr. Simpson opened the hearing for public comments. Ten (10) people and two (2) Town staff seated in the audience had comments/complaints, mainly centered on the management of the fraternity.

Joan Burgess, 36 Mount Pleasant Street, had five questions about: the number of violations filed with the police involving the house, a barking dog, limiting parking on the property, and not extending the permit for five years.

Elisa Rubenstein, 38 Fearing Street, stated her concerns about the garbage and dumpster. One dumpster for 3 places is not sufficient – garbage was overflowing all summer. She objected to the extension of the permit, and stated that there should be stricter conditions placed on the permit.

Bernie Rubenstein, 38 Fearing Street, said that he was concerned about the appearance of the neighborhood. He wants the conditions of the Special Permit enforced.

Ed Sunderland, 315 Lincoln Avenue, stated that he has had many interactions with Mr. Biddle, and found him congenial. But trash has gotten ahead of the applicant, and he needs to get it under control. Both parking and the dumpster are problems. He said that cars should be towed immediately if they block the driveway.

John Fox, 90 Fearing Street, stated that the property is always unsightly. He asked that the permit be limited to two (2) years, and that more stringent conditions be added so that the property will be cleaned up.

Mary Sunderland, 315 Lincoln Avenue, stated that trash is a terrible issue. There have been many weeks in a row when the overflowing dumpster is not emptied.

Mark Snow, Assistant Building Commissioner, stated that the neighbor's concerns have been the focus of official letters to Mr. Biddle and the fraternity. The Inspection and Fire Department letters were submitted to the Zoning Board prior to the hearing. There are fire and safety inspections every six months. They do not fine the fraternity with violations, but have shut it down. The residents have to go elsewhere until the violations are corrected.

Bill Klaus, Fire Department Inspector, stated that the fraternity building is a real fire hazard. Also, the dumpster is illegal - it is continually overflowing and is overflowing at every inspection. Cars always are blocking the driveway, and ambulances or other emergency vehicles cannot access the property. The unkempt driveway is difficult for emergency vehicles. Seven people died in fires at off-campus housing last year in the United States. He does not want it to happen here.

Sy Friedman, 10 Allen Street, stated that all three properties at the corner need separate dumpsters. He said that even with a two-year Special Permit there are ongoing problems.

Irene Friedman, 10 Allen Street, stated that there is not enough supervision for either of Mr. Biddle's properties in the area. She did call the dog warden for a continually barking dog at the four-plex (the multi-family on Fearing Street).

Niall Emmart, Allen Street, said that related to the poor management of the property, the neighborhood has become "party central". He asked the Police Department for a report of problems at the property for the last two years, and received a five (5) page listing of violations. He submitted this report to the Board. There were 17 instances of police calls at the property in the last two years, with four (4) arrests. The property is out of control, he said. Mr. Emmart suggested that the Town exert better supervision since it is not being done by the petitioner.

Winnifred Manning, 61 Fearing Street, said that she was at the last ZBA hearing concerning the property two years ago. She heard all the same neighborhood complaints and the same promises by the petitioner. She finds it discouraging that attention falls off after the Special Permit is issued. She suggested that if the permit conditions are not met on a monthly basis, then the permit should not be issued.

Some neighbors listed above spoke again, all stating that the property should be put "on probation" for review by the Board every six months. If conditions are not met, the permit would be revoked.

Mr. Biddle stated that the police visits were news to him. He said that those arrested were not members of the fraternity.

Chuck Moody, fraternity president, stated that for a full semester the fraternity had no social events. The police incidents occurred outside or next door, and don't think that the fraternity was involved.

Mr. Simpson commented on the large number of still alarms in the report. Details included dumpster fires, general smoke alarms, false alarms and smoking inside the building near an alarm.

Mr. Biddle said that there was a wrong computer chip in the alarm, and it was fixed two years ago. But Mr. Simpson noted that the alarms continued for the last two years, with the last date July 4<sup>th</sup>,

four weeks earlier. Mr. Biddle said that he didn't know the cause.

Mr. Biddle said that with regards to the dumpster, when people move out, they throw things at the dumpster. Lambda Chi was the main violator. He said that he spent \$4000 on trash pickups in 2004. Except for the end of the year, the trash is picked up, and is okay, he alleged.

Mr. Biddle went on to say that the Town does not allow more than one pickup per week. The Board replied that this is not the case. The Board of Health regulations require regular pickups as needed, whether it is daily or weekly, with weekly at a minimum, not maximum.

Mr. Emmart testified that it is not just the dumpster that's a problem; the main concern for him is the crazy neighborhood feel on the weekends. Even if people are arrested outside the fraternity house, it affects all that live there. His main concern is making the neighborhood safer.

Ms. Burgess noted that the police records indicate that a lot of residents' property tax dollars are spent for police and fire department activity at the location under consideration.

Ms. Rubenstein said that if there is no room for parking or for a dumpster, why is this Special Permit given? The July photographs in particular submitted by Inspection Services show what is there regularly – a mess and the lid always open. This is dangerous and a public health hazard.

Board member Ms. Ford said that the site plan for the property is not adequate. She said that she doesn't want to give a Special Permit if better information is not submitted. She wants more details of the management and a more comprehensive site plan submitted by the petitioner prior to the Board's deliberations.

Mr. Rising MOVED to CLOSE the evidentiary part of the hearing. Ms. Ford seconded the motion, and the vote to close the hearing was unanimous.

**Public Meeting:** September 7, 2005

At the deliberative part of the hearing, Board member Mr. Rising began with a review of the 5-page police report that had been submitted at the hearing. He said that the document showed an unreasonable number of calls. Every time the police or fire departments are called, it costs the Town money, and it takes the police and firemen away from something else they could be doing. It doesn't matter if the calls are false alarms or not, a reasonably run fraternity would not have these calls. Mr. Rising counted 25 fire calls that were labeled "still alarm".

Mr. Rising stated that he faults the management for the lack of compliance with the 2003 Special Permit. Problems have been ongoing in a number of areas:

- The number of fire calls and still alarms
- The inadequate trash management
- The complaints of the neighbors
- The noise disturbances
- The poor parking management and the blocking of trash collection or emergency vehicles.
- The parties on the street

Mr. Rising said that this is all evidence of inadequate and negligent management, and the past keeps repeating itself. He went through the site, and read the inspections reports. He has seen

many fraternities - as a fraternity member himself and as UMass faculty. He could not live in such a house, nor does he want his children or other parent's children to live in such conditions.

Ms. Ford agreed with Mr. Rising. If the Special Permit is allowed, but with very strict conditions, it would be hard to manage or enforce them from the Town's point of view. She questioned why it is deemed habitable in the first place. Allowing young people to live in a building like that is dangerous, she said.

Board Chair Mr. Simpson noted that he sat on the 2003 Special Permit decision, and the testimony was the same then. The Board must decide whether continuing the non-conforming use is appropriate and upholds the well-being of all the Town's citizens (Article 1 of the Zoning Bylaw.) If the permit is denied, a dozen people then will be looking for housing, he noted. UMass is using all the extra motel rooms at the moment, so finding housing will be difficult if the permit is denied.

The Chair recognized Mr. Biddle during the deliberations. Mr. Biddle stated that the fraternity has taken too much time to manage, and he does not want to continue renting to the fraternity after this year. In the spring, he plans to come to the ZBA for a Special Permit for a two-family dwelling. He has talked to the fraternity members and told them that they must move out by June, 2006.

Mr. Biddle went on to say that all the rooms were painted this past summer, but the Board did not visit any of the rooms during the site visit. He said that the trash is gone; a dumpster is in place; the house is livable. He also said that both the Fire and Inspections Departments want to continue the Special Permit.

Mr. Biddle said that he could follow the strict conditions of the August 25, 2005 memo sent by the zoning assistant. He will fill in the holes in the driveway. He is ready to work with the Board to make the last year of the fraternity successful.

Board Chair Simpson asked the Board members their thoughts – would they be willing to renew the Special Permit with strict conditions until May 31, 2006?

Member Rising said no, he will vote against renewal. The recommendations of the August 25<sup>th</sup> memo require constant checking, too much time by Town staff, and tax dollars of Amherst citizens.

Member Ford said that she is reluctant to vote for renewal, given the difficulties of enforcement.

Building Commissioner Bonnie Weeks said that often if a fraternity is closed down, it goes underground, and is even more difficult to control. Perhaps if the Board required house parents to live with the fraternity, that may help. Plus the previous conditions of the 2003 permit could be more clearly stated

Chair Simpson suggested that the Board go through Section 10.38 of the Bylaw and make specific findings before voting.

**Findings:**

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 – The Board found that, in some ways, the proposal is suitably located in the neighborhood in which it's proposed, since there are other fraternities in the area. On the other hand, this use is

not suitable because the area is now a residential district and the non-conforming fraternity use, as managed, has proven to be detrimental to the area.

10.381 – The proposal is not compatible with existing uses permitted by right – i.e., the single family homes - in the General Residence Zoning District.

10.382 & 10.383 - The proposal has constituted a nuisance due to noise and visually offensive structures with the party atmosphere and the unkempt condition of the house, driveway and dumpster. The proposal is a hazard to abutters, given the submitted 5 pages of police and fire calls in the last two years. The public statements of the abutters underscore the negative impact of the petitioner and fraternity's failure to abide by the conditions of the previous Special Permit.

10.384 & 10.385 – Adequate facilities have not been provided for the proper operation of the proposed use in that the poor condition of the driveway, the unkempt condition of the house, the extra furniture and recreation in the front lawn, the failed inspections by the Town's Inspection Services and Fire Department all show neglect and poor management of the house. The surrounding area has been negatively impacted as a result of this neglect.

10.386 – The proposal does not meet the parking requirements of the Bylaw or the previously approved site plan. Nine parking places are shown on the 2004 site plan for the 10-12 residents, but the testimony indicates that many more cars are on the property on a regular basis.

10.387 & 10.388 – The proposal does not provide convenient and safe vehicular movement within the site or adjacent streets, in that the crowded parking inhibits access and movement within and off the site. The site has proven not to be accessible for either emergency vehicles or the dump trucks to remove trash on a regular basis.

10.389 – The proposal has not provided adequate methods of disposal in that the petitioner removed the dumpster after the 2003 Special Permit was granted. The Fire Department reports stated that the shared dumpster was continually overflowing, and the pictures and reports submitted, plus the neighbors' testimony underscored the finding that the management has failed to meet Health Department standards and keep the property free of waste.

10.396 – The proposal has not provided screening for the dumpster, which has been observed to be continually open/overflowing. The Board also felt that better screening and definition of the property lines was in order, since the three properties at the corner of North Pleasant and Fearing Streets apparently share vehicular egress.

10.398 – The proposal has been shown not to be in harmony with the general purpose and intent of the Bylaw since the conditions of previous Special Permits were not complied with. The result has been that the health, safety, convenience and general welfare of the fraternity residents and surrounding area have been endangered and ignored.

### **Zoning Board Decision:**

Ted Rising made a motion to DENY the application; Barbara Ford seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to DENY a Special Permit to Michaelle Biddle to allow continued use of the premises at 382 North Pleasant Street as a fraternity or as a boarding house (Map 11C /Parcel 118, R-G Zone).

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TOM SIMPSON                      TED RISING                      BARBARA FORD  
FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.